

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company, Cambridge)	D.T.E. 03-100
Electric Light Company, and Commonwealth)	
Electric Company d/b/a NSTAR Electric pursuant to)	
G.L. c.164, sec.94 and 220 C.M.R. sections 5.00 et seq.,)	
for Approval of a new renewable power supply)	
offering.)	

COMMENTS OF
THE MASSACHUSETTS DIVISION
OF ENERGY RESOURCES

The Massachusetts Division of Energy Resources (“DOER”) is pleased to offer comments to the Department of Telecommunications and Energy (“the Department”) regarding the above-cited Petition, which will hereinafter be referred to as the “NSTAR Green” program. DOER petitioned to intervene in this matter on December 4, 2003. In support of its petition to intervene DOER stated its statutory responsibilities pursuant to M.G.L. c.25A, section 6.

DOER supports conditional approval of this program.

DOER’s Involvement in Renewable Energy Programs

As the Department is aware, DOER has some unique responsibilities with respect to renewable resources. DOER has the statutory responsibility to implement and monitor the Renewable Portfolio Standard regulations ("RPS"), at 225 CMR 14. We also are actively involved in the development of renewable energy in the region. Further, we have been an active participant on policy issues related to facilitation of retail competition, particularly for mass market customers. This filing raises a number of issues with respect to both areas that are of interest to DOER. Our basis of analysis of this proposal, our concerns about the filing, the benefits we see in the proposal, and

certain conditions we believe are imperative in order to allow the proposal to be approved by the Department, are set out below.

DOER is pleased that NSTAR is making the effort to offer a green product to their customers. We are cognizant of the fact that this is a voluntary filing, that the company is under no obligation to make this kind of proposal. We believe the Department's review of the filing should be somewhat tempered by this fact and balanced against the risk of having no program at all, should various modifications be proposed that are unacceptable to the company.

DOER's Analysis of NSTAR's Proposal

DOER's initial framework in approaching this type of proposal is premised in large part by our participation in the development of the National Grid GreenUp program. Therefore, DOER's analysis of the NSTAR proposal is based on the criteria we applied in reviewing the National Grid program, and also the Department's approval of that program. That analysis involved examining whether this proposal would increase the number of choices available to customers, whether it would familiarize customers with the concept of green power and raise awareness about the concept of electricity choice. In approving the National Grid program, the Department specifically said that "it was compatible with the development of competitive options." (D.T.E. 03-55, 2003) We believe those questions are relevant to the review of this proposal. DOER finds that on these issues, the NSTAR proposal is compatible with the development of competitive options.

However, it is equally important to look at what aspects of the proposal might be incompatible with the development of the competitive market. For example, DOER considered whether the program provides a mechanism for competitive suppliers to participate and how many options it contains. DOER also believes there should be a commitment of some kind relating to sunseting should the competitive market develop and become more robust for mass market customers. Upon review of these aspects of the proposal, the NSTAR program as proposed is incompatible with the development of the competitive market, as described below.

Single, Wholesale Product

First, the program offers a single product; it does not provide customers with a series of options, but rather has only one option. It is a wholesale model that does not allow for other suppliers to participate. For example, one of the drawbacks of NSTAR Green is that the competitive suppliers participating in the National Grid program will not have the opportunity to readily expand into the NSTAR market in order to make their endeavor in the state more successful. The program actually restricts the market for these suppliers, and it will affect their success in pursuing the green market here.

As designed, this program sends an inappropriate price signal to customers, because it is a wholesale-priced product as opposed to a retail product. The Department should recognize that there are a number of costs incurred by the suppliers participating in the National Grid program that would not be included in the cost for providing the NSTAR program as proposed. Those suppliers were required to pay some start-up costs to begin operating; they became licensed as suppliers, paid a third party to provide electronic data interchange for enrollment, and are financing substantial marketing activities. They also have significantly higher incremental administrative costs for enrollment and billing. By designing a program without those costs NSTAR would be providing a service at a price against which newcomers in the territory could never compete, and distorts the expectations of customers.¹

Branded Product

Secondly, we are very concerned about the fact that the product is branded. By calling it "NSTAR Green," the company is identifying itself with a generation product. DOER believes this is wholly inappropriate for a distribution company. Our concern is heightened by the fact that the company has already begun marketing the program on their website prior to approval by the Department. It suggests to DOER that there is a competitive business motive at work here that might not be appropriate for a distribution company. We do not see a distinction between a green product and a conventional generation product in terms of activities of a distribution company selling generation, and

¹ Consider, for example, the likelihood that the Cape Light Compact may offer a green product, which will have retail costs associated with it. Even if the NSTAR program was not offered to Cape Light customers, the price signal would communicate inappropriately that the NSTAR product is superior.

this branding could actually exacerbate the problem we see with customers understanding that distribution companies are not their generation suppliers.

Impact on the Cape Light Compact

A third concern of DOER relates to the impact this proposal would have on the Cape Light Compact ("the Compact"). The Compact is the one successful municipal aggregation in the state, and the NSTAR program should in no way be permitted to hamper the continued and further success of this effort. The NSTAR program could have a detrimental impact on the Cape Light Compact communities in the event that the Compact succeeds in getting approval for a municipal aggregation plan for Standard Offer customers. DOER considers this scenario highly likely given the outlook for prices for Standard Offer service in the Commonwealth Electric service territory beginning in 2004. The Department must weigh heavily the impact on those customers if the NSTAR Green proposal is approved. Some significant number of customers on Standard Offer could choose NSTAR Green only to be faced with a required opt-out decision in order to continue receiving renewable energy service from NSTAR when the aggregation is implemented. The Company should be required to address how it would handle an approved municipal aggregation plan for Standard Offer customers in the Cape Light Compact communities.

Lack of Sunset or Termination Provision

Fourth, DOER is concerned that there appears to be no sunset provision. The company has indicated that they are planning a two-year marketing program, but there is no discussion in their filing about when its program would terminate or transition to a structure allowing competitive marketers to provide this service. We are pleased that the Department has asked the Company to address this in their Information Requests. We believe the Company should address the issue of when it would be appropriate for this program to terminate in the context of a more robust competitive market.

Impact on Other Competitive Retail Markets

Fifth, Constellation NewEnergy commented in the Public Hearing (December 11, 2003) that the NSTAR Green product should not be offered to medium Commercial and Industrial (C&I) customers. DOER shares this concern. Because "there is already a functioning competitive retail market" for those customers and because Constellation

NewEnergy is currently offering a green power product to medium C&I customers (Transcript at pages 23-25), DOER believes the product should be available only to customers who have few options; limiting the offer to the Small Business and Residential customer classes.

Renewable Portfolio Standard Compliance

Finally, DOER's remaining concern is that we must ensure that RPS compliance is met to our satisfaction. A critical piece of verifying RPS compliance involves a review of the end-use sales of load-serving entities. Furthermore, DOER must be satisfied that no Renewable Energy Certificates ("REC's") sold for an attribute-based (or green) product were used to comply with RPS. In the National Grid program, DOER's concerns were satisfied with a commitment from National Grid that they would (1) document the identification numbers of the REC's purchased for RPS compliance and (2) demonstrate end-use sales of the renewable products using electronic business transactions ("EBT") protocols. DOER acknowledges that NSTAR makes a commitment in its filing to set up a separate subaccount for the enrollment of NSTAR Green customers, but DOER is concerned that the filing contains no details about committing to tracking end-use sales or documenting the Company's REC purchases.

DOER's Position is Generally in Support of this Program, but with Conditions

Despite the above concerns the proposal does offer some positive opportunities. It does increase choice to customers; it gives them an option. It can have a positive result in terms of educating customers that they have options, and in that way help them be more prepared for the end of the Standard Offer Service period, at which time they will more likely be faced with having to make a choice of service. It familiarizes customers with green power, which we view as a positive development. And it does present an alternative process for providing a green product. Therefore, we will be able to compare the results from the National Grid program with results from the NSTAR program. There is some benefit in seeing a different approach and having the opportunity to evaluate how its success relates to other approaches, not only within National Grid's Massachusetts territory, but also around the country.

DOER is aware that aspects of this program may be considered anti-competitive. However, it is important to note that such a program can only be anti-competitive if there is a competitive market to begin with, and we do not have a competitive market for the mass market retail customers today. DOER's position is that it is better to have this type of experimental program which may raise anti-competitive concerns, than no program at all. We think that the concerns identified and discussed above are issues that can be ameliorated, and that with certain conditions, the benefits of the program would outweigh the drawbacks.

DOER's Recommended Conditions for the Program

There are five conditions that DOER strongly believes must be imposed on an approval of this program. With these conditions, DOER would fully support the program. These conditions are the corollaries of the issues raised in our comments above.

The first condition relates to the issue of branding of this product. In our view, the name of this product has to be changed to something that is not associated with the company. DOER is not recommending what the name should be, but it just should not be associated with NSTAR or any of its companies.

Secondly, DOER believes it is extremely important to have a sunset provision similar to the one that is in the National Grid program, which would require considering transition of this program in the event that there is a robust, competitive market either through regulatory or Legislative changes or where 20 percent of the mass market customers of the company have migrated to other suppliers. That is the provision that is in the National Grid program, and it should be in NSTAR's program as well.

Third, the Company must address the impact of this program on the Cape Light Compact communities. DOER considers this renewable energy program to add value if and only if it is available exclusively in areas where electric competition has not adequately developed.

Because DOER deems it a strong likelihood that the Cape Light Compact will offer a municipal aggregation program to Standard Offer customers in its community, the renewable energy product should not be offered by NSTAR in those territories without some solution to its anti-competitive nature and the potential confusion to Compact

customers.² DOER does not prescribe any specific solution or revision at this time. But, the Company should consider among its options within the Cape Light communities : (1) co-marketing of a Cape Light green product and an NSTAR offering; (2) exclusive marketing of only a Cape Light green product; (3) a full ballot approach offering products from all qualified suppliers; (4) no availability to the NSTAR product, Cape Light to offer what it wishes through its own marketing.

Fourth, for reasons similar to the ones given regarding the Cape Light Compact, the renewable energy product should not be offered to medium C&I customers. As is the case with the National Grid program, since medium C&I customers currently have an adequate market to choose from, DOER considers this program to add value if and only if it is available exclusively to mass market customers.

Finally, DOER believes it is important to have RPS compliance assurances similar to those instituted by the National Grid program. DOER must have a commitment from the Company that they will document the identification numbers of REC's purchased for its RPS compliance. Furthermore, since NSTAR may not be using EBT protocols to enroll customers, they must report to DOER's satisfaction the end-use sales of the renewable energy product.

Respectfully submitted,

Robert Sydney
General Counsel
Massachusetts Division of Energy Resources

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² The Cape Light Compact's Default Service Pilot currently aggregates upwards of 52,000 customers. It is estimated that an aggregation of the Standard Offer service customers in those communities would increase that number to over 200,000 customers. According to DOER migration data from July 2003, the number of mass market customers receiving competitive supply as a percent of all mass market customers would represent roughly 56% of the 347,000 mass market customers in Commonwealth Electric's territory, 19% of the 1.0 million in NSTAR Company territories, and 10% of the state's 2.4 million. DOER notes that such an outcome would result in coming close to its own sunset threshold for migration. Under those circumstances, the application of the 20% threshold should be considered in the context of the retail competitive activity at the time.